

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

**JOSE FERNANDO AVENDANO-  
HERRERA,**

**Plaintiff,**

**v.**

**UNITED STATES OF AMERICA,**

**Defendants.**

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**Case No. CIV-18-1163-G**

**ORDER**

This matter comes before the Court for review of the Report and Recommendation (Doc. No. 10) issued by United States Magistrate Judge Shon T. Erwin pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). Petitioner, a federal prisoner appearing pro se, brought this action seeking habeas corpus relief under 28 U.S.C. § 2254. Judge Erwin recommends that the Petition for a Writ of Habeas Corpus (Doc. No. 3) be dismissed based on Petitioner's failure to comply with an order issued November 29, 2019 (Doc. No. 9).

Petitioner has not filed a written objection to the Report and Recommendation within the allotted time period, nor has he requested additional time to object. Judge Erwin specifically informed Petitioner of his right to object and the consequences of failing to do so. *See* Report & Recommendation at 2. Upon consideration, the Court concludes that Petitioner has waived further review of all issues addressed in the Report and Recommendation. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991). Therefore, the Court finds that the Report and Recommendation should be adopted in its entirety, as though fully set forth herein.

Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, the Court must issue or deny a certificate of appealability (“COA”) when it enters a final order adverse to a petitioner. A COA may issue only upon “a substantial showing of the denial of a constitutional right.” *See* 28 U.S.C. § 2253(c)(2). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Upon consideration, the Court concludes that the requisite standard is not met in this case. Therefore, a COA is denied.

It is therefore ORDERED that the Report and Recommendation (Doc. No. 10) is ADOPTED, and the Petition for Writ of Habeas Corpus (Doc. No. 3) is DISMISSED without prejudice. It is further ORDERED that a COA is DENIED. A separate judgment shall be entered.

IT IS SO ORDERED this 15th day of February, 2019.

  
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CHARLES B. GOODWIN  
United States District Judge